6. Is there a constitutional right to homosexual marriage under the U.S. Constitution?

Bowers v. *Hardwick*, 478 U.S. 185 (1986), and the Defense of Marriage Act, which is presumptively constitutional, indicate that there is no constitutional right to homosexual marriage under the United States Constitution. I have no personal belief that would prevent me from following applicable law in this or any other area.

Mr. KENNEDY. Madam President, I strongly support Susan Oki Mollway's nomination to the federal district court in Hawaii. Her nomination has now been pending before the Senate for two-and-a-half years. It is long past time to confirm this able nominee.

Ms. Mollway's credentials are impressive. She is a Harvard Law School Graduate and a partner at a prestigious Hawaii law firm, where her practice has included complex civil litigation. In 1987, she was voted Outstanding Woman Lawyer by the Hawaii Women Lawyers. She successfully argued a case before the Supreme Court of the United States in 1994.

Ms. Mollway has the support of every member of Hawaii's congressional delegation, and the federal judges in Hawaii hold her in the highest regard. She would be the first Asian-American woman to sit on the federal bench.

Some of our colleagues opppose this nomination because Ms. Mollway served on the Board of Directors of the ACLU in Hawaii, at a time when the ACLU was active in the same-sex marriage debate in that state. In fact, much of the ACLU's involvement in that debate took place long before Ms. Mollway became a member of the Board of Directors. In addition, Ms. Mollway has emphatically stated that she never voted on the position the ACLU should take on this issue or on any other litigation or legislation. The opposition to her nomination is unjustified, and it is no basis for denying confirmation.

Unfortunately, Ms. Mollway is just one of the many well-qualified women and minority nominees who have been arbitrarily delayed by the Senate and subjected to unfair ideological hazing.

In fact, in this Republican Senate, women are four times more likely than men to be held up for more than a year. Forty-three percent of the nominees currently on the Senate calendar are women. In the last three months, the Senate Republican leadership has allowed only one woman to be confirmed to the federal bench, while confirming 15 men. And, 16 out of 21 —that's 76 percent—of the nominees carried over from last year's session are women or minorities.

I urge my colleagues to support Ms. Mollway's nomination. It is time to end the logjam of qualified women and minority nominees. It is time to provide relief to the federal district court in Hawaii, whose caseload has doubled in the last five years. It is long past time to confirm Susan Oki Mollway. Her qualifications are outstanding and I am confident that she will serve with great distinction on that court. Frankly, the Senate should confirm her—and apologize to her as well.

Mr. INOUYE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Madam President, I want to say a couple of words about this nomination. I am very pleased that Susan Mollway's nomination has finally reached the Senate floor. As others have noted, it is a long, long time in coming. I am told that it has taken 2½ years. But today she is finally going to get a vote, and I am confident that she will be confirmed.

I think it is quite an impressive story. Susan Mollway, first nominated for the U.S. District Court for the District of Hawaii in December of 1995, was reported favorably by the Senate Judiciary Committee on April 25 of 1996. Nothing happened, of course, with that nomination, and she was renominated again on January 7 of 1997 and again reported out favorably by the Judiciary Committee.

She must be the most patient woman in the world. For all this time, with all this uncertainty, with all of the implications professionally, it has been a long wait, not only for her, but for Hawaii.

The seat which Ms. Mollway has been nominated to has been vacant now for 3 years, since April of 1995. Were it not for the extraordinary persistence of our colleagues from Hawaii, the senior Senator, DANIEL INOUYE, and the junior Senator, DANIEL AKAKA, we would not be here this afternoon. It is only their persistence and the extraordinary credibility and, frankly, persistence that they have demonstrated for all this time that we are now celebrating this moment.

Their persistence is well invested. Susan Mollway is fully qualified and will be an extraordinary credit to the bench. She is a partner in the Honolulu law firm of Cades, Schutte, Fleming and Wright where she went upon graduation from Harvard Law School.

She has practiced in a broad range of areas, including a successful argument before the U.S. Supreme Court. She has won numerous awards, including the Hawaii Women Lawyers' Outstanding Woman Lawyer Award in 1987.

The granddaughter of a ''picture bride'' and a plantation worker in Hawaii, Ms. Mollway and her family have learned strength and commitment from their story. Her father left high school during World War II to join a Japanese-American unit of the U.S. Army. Together with Senator INOUYE, he fought in Europe as part of the 442nd Regiment Combat Team, the most decorated military unit of its size in World War II. At the same time, people he knew were among the thousands of Japanese-Americans interned by our own Federal Government. Later, Ms. Mollway's father used his veteran's benefits to attend Harvard. Clearly, his daughter now understands the great joy and honor of being an American, but also the burdens and barriers faced by some in our society.

We are all proud of the distance we have come as a society in ending the kind of discrimination faced by Japanese-Americans of Ms. Mollway's father's generation, but the confirmation of this judge to be now U.S. district judge will mark yet another step in this progress. Susan Mollway is an outstanding nominee and deserves to be confirmed.

I, again, congratulate my two colleagues from Hawaii, and I call upon all of my colleagues to vote in her favor in 40 minutes.

I yield the floor.

Mr. INOUYE. Madam President, I ask unanimous consent that Senator SESSIONS and I be permitted to yield back the remainder of our time and that at the hour of 5 p.m., a rollcall vote be taken on this matter.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. INOUYE. Madam President, may I change that to 5:10?

The PRESIDING OFFICER. Without objection, it is so ordered.

Does the Senator wish to request the yeas and nays at this time?

Mr. INOUYE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

MORNING BUSINESS

Mr. INOUYE. Madam President, I ask unanimous consent that there now be a period for the transaction of morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WYDEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WYDEN. Thank you very much, Madam President.

SECRET HOLDS ON NOMINATIONS AND LEGISLATION

Mr. WYDEN. Madam President, only 52 legislative days remain in this session. Dozens of nominations are pending, and more than 400 items are on the calendar. Being an election year, this

is a recipe for the explosion of a little-known procedure, but one that is extraordinarily important as the Senate moves to the end of the session. I speak today about the issue of secret holds on nominations and legislation before this body.

Nowhere in the Constitution nor in our Federal statutes is there any mention of the right of a U.S. Senator to put a secret hold on a bill or a nomination. Nevertheless, this power is one of the two or three most significant powers that a Member of the U.S. Senate can have. In effect, this power allows any Member of the U.S. Senate, in secret, to block a nomination or a piece of legislation from even being considered on the floor of this body.

I have talked to citizens at home about this. They are stunned that any Member of the U.S. Senate would have the power to be able to block something. But what really galls them is the right to do it in secret without there being any accountability whatsoever.

I am of the view that it is appropriate that Members of the U.S. Senate, in efforts to represent our constituents, have the power to make decisions that are going to affect dramatically the lives of millions of Americans. But I think that extraordinary power ought to be accompanied by real responsibility. Certainly if one Member of the U.S. Senate is going to block this body from even considering a bill or a nomination, it should be accompanied by public disclosure.

Our friend, Senator GRASSLEY, has come on to the floor. The Presiding Officer and our colleagues know that for more than a year he and I have been trying to bring some sunshine to the U.S. Senate. We have been trying to change the rules so that if a Member does singlehandedly seek to block a nomination or a bill from coming to this floor, they would be required, as part of the Standing Order of the Senate, to stipulate in the CONGRESSIONAL RECORD that they were, in fact, that individual.

We are moving to that part of the legislative session where the secret hold is most abused. Very shortly, in this body we will begin a game that I call legislative hide and seek. We will have holds on nominations and bills. Outside this Capitol Building there will be lobbyists trying to figure out who has put a secret hold on a particular bill or nomination. And this entire process contributes to the cynicism and skepticism that so many Americans have about our government today.

Madam President and colleagues, it came to light in the fall of 1997—which, as we all know, wasn't an election year—that there were 42 holds in play at one time. As I mentioned, this game of legislative hide and seek was underway outside these Chambers.

At that time, Senator GRASSLEY and I were able to win on a voice vote an amendment to change the Senate's Standing Orders to require public disclosure of a hold. But then, in what was really the ultimate irony, our effort to end secret holds was secretly killed in a conference committee and vanished when the D.C. appropriations bill was brought back before the Senate.

I hope now with just over 50 legislative days remaining, that the Senate would on a bipartisan basis change this particular longstanding tradition—a tradition noted nowhere in the Constitution, our Federal statutes or Senate rules—and bring some openness and some sunshine to this body.

The hold started out as simply an effort to try to accommodate our colleagues. If a Member of the U.S. Senate had a spouse who was ill or a relative who faced a particular problem, they could, on a Monday, say, ''I can't be there on Tuesday, would it be possible to hold things over for a couple of days so I could address a matter that was important to my constituents?''

That is not what Senator GRASSLEY and I are talking about. We are not talking about the right of a Senator to be present to discuss an issue important to them and to their constituents. We are talking about making sure that when a Member of the U.S. Senate digs in and digs in to block a particular nomination or a bill from either coming to the floor or ever being considered at all, that at that point they would be required to disclose publicly that they are the individual who is blocking consideration by the Senate.

Under our amendment no Member of the U.S. Senate would lose their power to place a hold on a bill. A Senator's power would be absolutely unchanged with respect to the right to place a hold on legislation. All that Senator GRASSLEY and I are saying is when you put on that hold, be straight with the American people. Let the Senate and let the American people know that you are the person who feels strongly about a particular issue. Make sure that it is possible, then, for us to find out where in the discussion of a particular nomination or piece of legislation the Senate is considering there is a problem. This has not been the case, and this situation is getting increasingly serious.

In the two years since I have been here I have seen more and more abuse of this process. We are seeing in a number of instances that even the Senators themselves don't know that a hold is being placed in their name. I have had Senators come to me and say, ''I learned that one of my staff''—or someone else's staff—''put a hold on a bill,'' and the Senator I was working with didn't even know that a hold had been placed on the legislation.

This ought to be an easy reform for the U.S. Senate. It simply would require openness, public disclosure, and an opportunity for every Member of the Senate and for the American people to know who, in fact, feels sufficiently strongly about that bill, that they are the one keeping this body from considering it.

A number of public interest organizations and opinion leaders have come out in favor of the effort being pursued by myself and Senator GRASSLEY. I will close my opening remarks and then yield my time to Senator GRASSLEY, with just a quick statement from a Washington Post editorial that came out in favor of this effort.

The Washington Post said:

> It's time members of the Senate stand up and answer to each other and the public for such actions. What are they scared of?

That, Madam President, is what this issue is all about. It doesn't pass the smell test to keep this information from the American people. There is not a town meeting in our country where it is possible for a Member of the U.S. Senate to say, ''I'm involved in making decisions that affect millions of people and billions of dollars, but you know, I'm not going to tell you anything about it. I'm not going to let you in on this particular procedure.''

Again, this is a procedure that has evolved over the years, that is written down nowhere, not in the rules, not in the statutes, and not even in the Constitution.

Madam President, it is time to ensure that when Senators exercise the extraordinary powers that we are accorded in the Constitution and the laws of our land, that those powers be met with responsibility, powers that make it clear that when there is legislation affecting billions of dollars and countless Americans that we are going to let the public in on the way the Senate does its business.

Senator GRASSLEY and I filed our amendment to the Department of Defense authorization bill. It is our intention to bring this bipartisan amendment before the Senate at the earliest opportunity. We want to make it very clear that between now and the fall, when we are likely to have 60, 70, 80 secret holds and this game of hide and seek is being played all over the Capitol, Senator GRASSLEY and I want to have the Senate rules changed so that the public will know at the end of a session how and when these important decisions are being made.

Before I conclude, let me just say to my colleague from Iowa, who has joined us on the floor to speak after me this afternoon, I have enjoyed working with him on many issues. I serve on the Senate Aging Committee, which he so ably Chairs, but I am particularly appreciative of the chance to work with him on this issue. We have had a bipartisan team pursuing this matter for many, many months. We want it understood that there is absolutely nothing partisan, nothing Democrat, nothing Republican, about our desire to bring real openness and accountability to the U.S. Senate. This isn't about partisan politics. This is about good government. This is about making sure that in the last days of a Senate session we are no longer playing legislative hide and seek, but are making decisions in a way that we are accountable to the public, and that the American people can follow. We want to contribute to confidence in the way the

Senate does its business, rather than to what we face today, which is additional skepticism and cynicism by virtue of the fact that the Senate does so much business at the end of a session in secret.

I thank my colleague from Iowa, and I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Parliamentary inquiry. Is there any time limits? I know we vote at 5:00.

The PRESIDING OFFICER. The Senate is in morning business until 5:10, at which time a vote will occur.

Mr. GRASSLEY. Madam President, before I start to debate this issue, I should say thank you to my colleague from Oregon for his leadership in this area. He has worked very hard on it. I have been very happy to be supportive of him—and I am fully supportive of him. I have told him how secret holds have affected me and now both he and I practice what we preach—that is, we declare our intentions to put a hold on a piece of legislation if we decide to take that action. Obviously, being open about placing a hold has worked for us and it is a sound practice.

I want to state the proposition that eventually what is right is going to win out in the Senate. I know that constituents are skeptical about right winning out in this body, and I suppose sometimes it takes a long time for right to win out; but I believe if you feel you are in the right, and that you are pursuing the right course of action and, particularly, as in this case, when your opponents don't have a lot to say about what you are trying to do, I think you can be confident that you are pretty much on the right course. There wasn't much opposition to this expressed on the floor of the Senate last year. My guess is that there won't be a lot expressed this year either, and eventually we will win. I think we will win this year. But if we don't, we are going to win sometime on this proposition because it is so right and because we are not going to give up.

I know persistence pays because it took me about 6 years, ending in 1995, to get Congress covered by a lot of legislation that it exempted itself from. A lot of laws were applicable to the rest of the country and were not applicable to those of us on Capitol Hill. That was wrong. It was recognized as being wrong. So I presented the motions to accomplish the goal of getting Congress to obey the laws everyone else had to follow. They were hardly ever argued against on the floor of this assembly. But in the ''dark dungeons'' where conference committees are held, somehow those provisions were taken out—until after about 6 years of discussing the issue of congressional exemptions, and the public becoming more aware of this shameful situation, finally there was enough embarrassment brought to Congress that we could not keep that exemption from those laws any longer. So we passed the Congressional Accountability Act early in 1995. It was the first bill signed that year by the President of the United States. We have ended those exemptions that were so wrong.

I still remember that, early on in that period of time, how my colleagues would just say privately to me, ''What a terrible catastrophe it is going to be for the Congress to have to live under these laws that apply to the rest of the Nation''—laws like civil rights laws, worker safety laws, et cetera. We have had to live under those laws for 3 years now, and it hasn't harmed us at all. It has been good for the country to have those of us that make laws have to actually understand the bureaucratic morass and red tape you have to go through to meet those laws, and some of the conditions on employment, some of the working conditions in the office, some of the wage and hour issues that private employers have to go through. We understand those now. We have to be sympathetic to their arguments more because we have to live under those laws.

Well, that is one example of right ultimately winning. That brings me to what is right about this. There are plenty of reasons for holds, and there is nothing really wrong with holds. There is nothing that our legislation says is wrong with holds. But the reasons can be purely political. Sometimes holds are put on for one colleague to use as leverage with another colleague, to move something that maybe another individual is blocking. There can be truly flawed legislation, and maybe there such holds legitimately allow more time to work things out. However, other holds can be purely a stalling tactic. A hold could be all could be for all of those reasons and more. It doesn't matter what the reason is. We don't find fault with those reasons. We only say that the people that are exercising the hold, for whatever reason, ought to say so, and why.

It is going to cause the Senate, I think, with our amendment, to be run more openly and efficiently. It is going to lift one of the veils of secrecy. It is not going to lift all of the veils of secrecy in a parliamentary body. I don't know that I would call that all of them be lifted. I am not sure I could even enumerate all of the layers of secrecy that might go on. But this is one form of secrecy that is not legitimate.

As I said, we do not ban holds or the use of them, for whatever reason they might be made. We just stipulate that they must be made public so that we know who is putting the hold on. We would like to know why the hold is being put on, but that is not even a requirement in our legislation. Just tell who you are. You don't even have to say why. It is pretty simple. It is pretty reasonable.

A lot of my colleagues, I think, fear retribution. If they are putting a hold on for a legitimate reason, why should they have to fear that? Maybe the greater good of the body, the greater good of the country would be their motivation. They might think they would experience some sort of retribution and that is why they may not want their hold to be known. I say that, after 2 or 3 years of practicing open holds myself, there is no fear of a hold being known. I can tell you this: I probably was somewhat nervous the first time I announced that I was going to make public in the CONGRESSIONAL RECORD why I was putting a hold on. I thought that maybe I was opening myself up to a lot of retribution, a lot of trouble that I don't need. I probably don't use holds very often. You could probably count the number of times on one hand that I would use a hold in the course of a Congress. Regardless, the times that I have done it, I can tell you that there is no pain. No harm came to me. There is no retribution that came to me as a result of it from any of my colleagues. And 98 others beside Senator WYDEN and myself could do that, and they don't.

I can tell you about the problems I have had finding out who has a hold, why they have a hold; and then we have had these rotating holds where somebody has found out and some friend will put a hold on in his place. You run those things down. It is not a very productive way to be a Senator. If I can go to the CONGRESSIONAL RECORD and find out who doesn't like my proposition, who doesn't like this nominee, et cetera, I can go to that individual and just talk up front about the reason, and I think it will even speed up the work of the Senate. If each Senator can be a little more efficient, then the Senate is going to be a little more efficient body as a whole.

So this is one of those things that, from every angle—every reason for making a hold open is a good reason. Look at all of the prospective opposition to it and the reasons for the opposition. First of all, people don't very freely express opposition to it. But when they do express an argument against making holds open, it is not a very good reason to be against it. When you have these public policy arguments for making holds open that are good, good, good, why should we waste any time? They just ought to be adopted; they ought to be a part of the practice and make the public's business more public. That is what the Wyden-Grassley amendment is all about. I hope my colleagues will support us in this effort.

I yield the floor.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

PRIVILEGE OF THE FLOOR

Mr. INOUYE. Madam President, on behalf of the Senator from Illinois, Mr. RICHARD J. DURBIN, I ask unanimous consent that Mr. Christopher Midura, a legislative fellow with his staff, be accorded privileges of the floor during consideration of both S. 2057 and S. 2132.